

DESIGN-BUILD CONTRACT

FOR

BRANDON MOB INVESTORS, LLC

FLOWOOD, MISSISSIPPI
ERDMAN COMPANY PROJECT NUMBER 5724-20

Cogdell Spencer, Inc.

Design-Build Contract

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Cogdell Spencer, Inc.

Design-Build Contract

ERDMAN COMPANY

Design-Build Contract and General Conditions

PREAMBLE

This Design-Build Contract (hereinafter "Contract") is entered into this 9th day of February, in the year of 2009, by and between the

OWNER: Brandon MOB Investors, LLC
c/o Erdman Company
3100 Northwoods Place, Suite F
Norcross, GA 30071
Attn: Susan Dorr, Development Executive

(hereinafter "Owner") a Mississippi limited liability company

and

DESIGN-BUILDER: Erdman Company
(f/k/a) MARSHALL ERDMAN & ASSOCIATES, INC.
P.O. Box 44975
Madison, WI 53744-4975
(hereinafter "Design-Builder"), a Wisconsin corporation,
for services in connection with the following

PROJECT: Two-story medical office building located on approximately 6.5 acre
parcel at the corner of Lakeland Place and Plaza Drive in Flowood, Mississippi, 39232
(hereinafter "Project").

In consideration of the mutual covenants and agreements herein, Owner and Design-Builder agree as set forth herein.

ARTICLE 1 – GENERAL PROVISIONS

1.1 Spirit of Cooperation

The Owner and the Design-Builder agree to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under the Design-Build Documents.

1.2 Allowance

An Allowance is a direct cost amount which is included in the Contract Sum for a specific portion of the Work. Allowances are described in Exhibit "D" entitled "Contract Allowances". Upon reconciliation with the actual cost of performing such work, the Owner shall either bear the additional cost or receive a credit to the Contract Sum by Change Order.

1.3 Change Order

A Change Order is a written instrument issued after the execution of this Contract signed by Owner and Design-Builder stating their agreement to changes in the Work and adjustment to the Contract Sum, Scheduled Substantial Completion Date, or both.

1.4 Day

Day or Days shall mean calendar days unless otherwise specifically noted in the Design-Build Documents.

1.5 Hazardous Conditions

Hazardous Conditions are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements

1.6 Legal Requirements

Legal Requirements are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.7 Others

Others means other contractors and all persons at the Worksite who are not employed by Design-Builder or its Subcontractors.

1.8 Project

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

1.9 Representatives of the Parties

.1 Owner's Representative

Owner designates the individual listed below as its Owner's Representative, which individual shall have complete authority to transmit and receive information to and from the Design-Builder, and interpret, define and determine Owner's decisions with respect to prosecution of the Work.

Brandon MOB Investors, LLC
c/o Erdman Company
3100 Northwoods Place, Suite F
Norcross, GA 30071
Attn: Susan Dorr, Development Executive

.2 Design-Builder's Representative

Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual shall have complete authority to transmit and receive information to and from the Owner, and interpret, define and determine Design-Builder's policies and decisions with respect to prosecution of the Work.

Ralph Lomma
Project Construction Manager
Erdman Company
3100 Northwoods Place, Suite F
Norcross, GA 30071
770-416-0772 Phone
770-416-7646 Fax
rlomma@erdman.com

1.10 Site

Site is the land or premises on which the Project is located.

complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

3.1.1 The Design-Builder shall notify the Owner when the Work or an agreed upon portion thereof is substantially completed by issuing a Certificate of Substantial Completion which shall: (1) indicate the date Substantial Completion of the Work was achieved, (2) include a list of items to be either completed or corrected by mutual agreement between the parties (hereafter "Punch List") and (3) fix the time by mutual agreement of the parties within which the Design-Builder shall complete Punch List items.

3.1.2 In the event of a dispute regarding when or whether the Design-Builder has achieved Substantial Completion of the Work, the dispute shall be resolved pursuant to Article 12.

3.2 Final Completion

Final Completion shall occur when Punch List items are complete. Additional items discovered after completion of the Punch List will be corrected under the provisions of Article 9 - Warranties.

3.3 Delays in the Work & Force Majeure

3.3.1 If causes beyond the Design-Builder's control delay the commencement or progress of the Work, then the Contract Sum, Scheduled Substantial Completion Date, or both shall be equitably adjusted by Change Order. Such causes shall include but not be limited to: changes in the Work requested by Owner, acts or omissions of the Owner, separate contractors employed by the Owner, or Others, hazardous materials not brought to the site by Design-Builder, differing site conditions, wars, floods, earthquakes, labor disputes (including but not limited to strikes, slowdowns, job actions, picketing and secondary boycotts), unusual delays in transportation, epidemics, adverse weather conditions not reasonably anticipated, fire or other casualty loss, public disorder or riot, unavoidable accidents, delays in regulatory inspections or approvals, or any other casualties, circumstances or cause beyond the control of the Design-Builder.

3.3.2 In addition to Section 3.3.1, if adverse weather conditions not reasonably anticipated, whether specifically related to the Project Site or not, impact the Project, then the Contract Sum, Scheduled Substantial Completion Date, or both shall be equitably adjusted by Change Order. Such impacts shall be limited to labor or material cost increases resulting from such adverse weather conditions. Hurricanes, windstorms, storm surges, floods, earthquakes, tsunamis and other similar extreme conditions shall, in any event, be considered not reasonably anticipated. For purposes of this clause, adverse weather conditions shall include earthquakes.

3.3.3 In the event of any delay under this Section 3.3, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

1.11 Subcontractors

A Subcontractor is any person or entity who has a direct contract with Design-Builder to perform a portion of the Work.

1.12 Work

Work means the design, construction, and other services required by the Design-Build Documents, including furnishing labor, materials, equipment and services reasonably inferable from the Design-Build Documents, to be provided by Design-Builder. The Work may constitute the whole or a part of the Project.

ARTICLE 2 - DESIGN-BUILD DOCUMENTS

2.1 The Design-Build Documents form the Design-Build Agreement. The Design-Build Documents shall include this Contract between Owner and Design-Builder, its attached exhibits, other documents listed in the Contract and exhibits, including the Contract Design Drawings and Specifications referenced in Exhibit A, and Modifications, as defined in Section 14.9 hereof, to the Design-Build Agreement.

2.2 The Design-Build Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases to be interpreted in a manner consistent with design and construction industry standards. In case of any inconsistency, conflict or ambiguity between or among the Design-Build Documents, the documents shall govern in the order in which they are listed below (e.g. 2.2.1 shall take precedence over 2.2.2 and so forth):

2.2.1 Modifications, in accordance with Section 14.9, except to the extent used to make construction documents part of the Design-Build Documents;

2.2.2 This Contract, including all exhibits, attachments, and documents listed in this Contract, except for the Contract Design Drawings and Specifications referenced in Exhibit A;

2.2.3 The most current construction documents, as described in Section 11.1;

2.2.4 The Contract Design Drawings and Specifications referenced in Exhibit A.

ARTICLE 3 - COMPLETION

3.1 Substantial Completion

The Design-Builder shall achieve Substantial Completion of the Work on or before the Scheduled Substantial Completion Date. The Scheduled Substantial Completion Date shall be, subject to adjustments permitted by the Design-Build Documents, as follows June 4, 2010. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently

3.4 Owner Occupancy

If the Owner wishes to use or take occupancy prior to Final Completion, it may do so, provided that such occupancy or use is consented to by the insurer, if so required by the insurer, authorized by public authorities having jurisdiction over the Work, the parties have a written agreement stating the responsibility of each party for security, maintenance, heat, utilities, insurance and damage to the Work and the Owner makes payment as provided in Section 4.3.1 below.

ARTICLE 4 - CONTRACT SUM AND TERMS OF PAYMENT

4.1 Contract Sum

The Owner shall pay Design-Builder for the latter's performance of this Contract, and for the materials and equipment utilized within the Project, subject to additions and deductions by Change Order, the total Contract Sum of:

Twelve million five hundred eight thousand seventy seven and 00/100***(\$12,508,077.00)**

The Contract Sum includes the Allowances referenced on Exhibit D entitled "Contract Allowances".

4.2 Initial Payment

An Initial Payment of \$ 0.00 shall be paid upon execution of this Contract. Such Initial Payment is based upon the fees incurred by Design-Builder in connection with the services rendered to the Owner for this Project or \$0.00, less a credit of \$ 0.00 previously paid by Owner to Design-Builder for design development services.

4.3 Progress Payments

4.3.1 On or about the last day of each month, the Design-Builder shall prepare an Application for Payment on the form attached as Exhibit B entitled "Application for Payment" indicating the value of all labor and materials incorporated into the Work and of materials suitably stored off or at the site during this month. Upon request by the Owner, such Application for Payment will be accompanied by labor and material lien releases for work through the previous month. The Owner, not later than the fifteenth day of the following month, shall pay the Design-Builder ninety-five percent (95%) of the amount indicated as owing by such Application for Payment. If upon Substantial Completion of the Work the Owner wishes to take occupancy, full payment of the Contract Sum shall be made to the Design-Builder less any amounts held pursuant to Section 4.3.2 which shall be either placed in an interest bearing escrow account with interest accruing to the Design-Builder or held by the Owner as trust funds for the benefit of the Design-Builder and released to Design-Builder from time to time upon completion of listed items.

4.3.2 If at the time of Substantial Completion of the Work Punch List items remain to be either completed or corrected, then the Owner and Design-Builder shall agree to an amount to be withheld until the Punch List items have been completed. If the parties cannot agree on an amount, then the amount shall be one and one-half (1 ½) times the reasonable value of the required work as mutually agreed to by Owner and Design-Builder.

4.3.3 Payments made under Section 4.3 above shall not be construed as final approval or acceptance by the Owner of any defective labor or materials incorporated into the Project.

4.4 Final Payment

Upon Final Completion, as defined above in Section 3.2, all amounts withheld by Owner under Section 4.3.2 shall be paid to Design-Builder. Before Final Payment is due, it is understood the Design-Builder will obtain and furnish lien releases from all persons who have supplied labor or materials to Design-Builder in connection with the construction of the Project and who at such time may still have lien rights by reason thereof.

4.5 Sales and Use Tax

The Design-Builder shall pay all sales, use and other similar taxes in effect at time the parties enter into this Contract for the Work or portions thereof provided by the Design-Builder. The Design-Builder shall provide that each Subcontractor shall pay all sales, use and other similar taxes for the Work or portions thereof provided by the Subcontractor.

4.6 Late Payment

A late payment charge shall be paid on any and all payments received after the due dates. The late payment charge shall be equal to one percent (1%) per month or the maximum rate provided by the Legal Requirements, whichever is less and shall accrue on a compounding and daily basis until receipt of payment.

4.7 Failure of Payment

If Owner fails to make payment to Design-Builder as required in this Article 4 for reasons other than the Design-Builder's breach of this Contract, as described in Article 13, then the Design-Builder may, upon seven days written notice to Owner, stop the Work until payment of the amount owing has been received and the Contract Sum, Scheduled Substantial Completion Date, or both have been equitably adjusted by Change Order to reflect the impact of such delay on Design-Builder's Work.

ARTICLE 5 - CHANGES IN THE WORK

5.1 Change Orders

Changes in the Work may be accomplished after execution of this Contract by Change Order. Change Orders will be based upon an agreement between

Owner and Design-Builder and executed on the Change Order Form attached hereto as Exhibit C.

5.1.1 A revision in the Contract Sum resulting from a change in the Work shall be determined by the following method:

- a) The Owner will pay the cost of professional services applicable in connection with Section 11.2.2 to evaluate the request, and then by either,
- b) The total estimated cost of the change in the Work, including both professional and construction services applicable in connection with Article 11 below and any related expenses and profit, or
- c) A mutually accepted, itemized lump sum.

5.2 All changes in the Work authorized by a Change Order shall be performed under the applicable conditions of the Design-Build Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

ARTICLE 6 – HAZARDOUS CONDITIONS AND DIFFERING SITE CONDITIONS

6.1 Hazardous Conditions

- 6.1.1 Unless otherwise expressly provided in the Design-Build Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.
- 6.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.
- 6.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

- 6.1.4 Prior to the resumption of the Work in an area affected by a Hazardous Condition, the Contract Sum, Scheduled Substantial Completion Date, or both will be equitably adjusted by Change Order to reflect the impact of the presence of a Hazardous Condition on Design-Builder's Work.
- 6.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.
- 6.1.6 Notwithstanding the preceding provisions of this Section 6.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

6.2 Differing Site Conditions

- 6.2.1 Concealed or latent physical conditions or subsurface conditions at the site that (i) materially differ from the conditions indicated in the Design-Build Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions". If Design-Builder encounters a Differing Site Condition, the Contract Sum, Scheduled Substantial Completion Date, or both will be equitably adjusted by Change Order to reflect the impact of such Differing Site Condition on Design-Builder's Work.
- 6.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

ARTICLE 7 - PERFORMANCE AND PAYMENT BOND

- 7.1 The cost of a performance bond and payment bond is not included in the Contract Sum. If requested by the Owner, prior to commencement of construction, the Design-Builder shall furnish such bonds after entering into a Change Order for the same.

ARTICLE 8 - INSURANCE AND INDEMNIFICATION

8.1 The Owner and Design-Builder shall purchase and maintain insurance as set forth in this Article 8.

8.2 Workers Compensation and Employers Liability

Design-Builder shall purchase and maintain workers' compensation and employer's liability insurance with minimum limits as follows:

\$1,000,000 each occurrence Bodily injury by accident
 \$1,000,000 each occurrence Bodily injury by disease
 \$1,000,000 each occurrence Disease aggregate limit

Such coverage shall include Other States coverage.

8.3 Commercial General Liability

Design-Builder shall purchase and maintain commercial general liability insurance. The Owner shall be named as an additional insured under Design-Builder's commercial general liability insurance. Coverage shall include Independent Contractor's Liability, Broad Form Blanket Contractual Liability, Completed Operations and Products Liability, all on the occurrence basis, with Personal Injury Coverage and Broad Form Property Damage. Minimum liability amounts shall be as follows:

8.3.1 Limits of Liability

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal/Advertising Injury Limit
\$1,000,000	Each Occurrence Limit

8.4 Commercial Automobile Liability

Design-Builder shall purchase and maintain commercial automobile insurance including owned, non-owned and hired vehicle coverage with minimum limits of \$1,000,000 combined single limit per occurrence.

8.5 Umbrella Liability

Design-Builder shall purchase and maintain umbrella liability insurance with minimum limits of \$5,000,000 for bodily injury and property damage. The umbrella liability coverage shall be kept and maintained in effect for the term of applicable primary insurance.

8.6 Property Insurance for the Work

8.6.1 Unless otherwise provided, the Design Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form, on a

replacement cost basis, in the amount of the initial insurable value of the Work, plus the value of subsequent modifications. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Substantial Completion of the Work, if provided by Design-Builder, or, if provided by Owner, until (i) final payment has been made as provided in Section 4.4; or (ii) no person or entity other than the Owner has an insurable interest in the property required by this Section 8.6 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, and Subcontractors of every tier in the Project.

- 8.6.2 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss, including professional fees, reasonable profit and overhead. This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit. The property insurance policy shall be provided to Owner.
- 8.6.3 If the Owner is to provide builder's risk insurance under Section 8.6.1 or property insurance under Section 8.8.2, or both, then the Owner shall purchase and maintain boiler and machinery insurance which shall specifically cover equipment installed either by Design-Builder or Owner prior to Final Completion. Such insurance shall be obtained prior to the commencement of construction and maintained until Final Completion. This insurance shall include interests of the Owner, Design-Builder, and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.
- 8.6.4 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.
- 8.6.5 Partial occupancy or use in accordance with Section 3.4 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

8.7 Professional Liability Insurance

Design-Builder shall purchase and maintain professional liability insurance with minimum limits of not less than \$1,000,000 per claim and annual aggregate.

8.8 Owner's Insurance

8.8.1 Owner's Liability Insurance

The Owner shall purchase and maintain such liability insurance to protect the Owner from claims which may arise from the performance of the Owner's obligations under the Contract or the Owner's conduct during the course of the Project.

8.8.2 Property Insurance for Items Not Part of the Work

The Owner shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance, on a replacement cost basis, in the amount of the insurable value of (i) any existing or permanent property to which the Work shall be attached or form a part; (ii) any work performed by Owner (directly or through Others); and (iii) any business and medical equipment brought on Site by Owner. Such insurance shall be obtained, to the extent commercially practicable, on the same terms and conditions described in Section 8.6 for the builder's risk policy.

8.8.3 Loss of Use Insurance

The Owner shall purchase and maintain insurance which shall insure the Owner against loss of use of the Owner's property (including any equipment) due to fire or other hazards, however caused. Owner waives all rights of action against the Design-Builder and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

8.8.4 Owner's Tenants

Owner shall cause its tenants, if any, to purchase and maintain the insurance as required of Owner by this Article 8 to the extent the same have insurable interests. Both Owner and its tenants, if any, shall have such insurance in place prior to locating any such property onto the Project Site.

8.8.5 Miscellaneous

If Design-Builder is damaged by the failure or neglect of the Owner or its tenants, if any, to purchase and maintain insurance as described above without so notifying the Design-Builder in writing, then the Owner shall bear all reasonable cost property attributable thereto.

8.9 Waiver of Subrogation

The Owner and Design-Builder waive all rights of recovery against each other and any of their tenants, consultants, Design-Builder's Subcontractors and agents and employees of each and all of them, for damages covered by (a) property insurance provided pursuant to this Article 8, (b) property, boiler and machinery, and consequential loss of use insurance carried by the Owner on property at or adjacent to the Project, and (c) property, boiler and machinery, and consequential loss of use insurance for the Project, or on property at or adjacent to the Project after Substantial Completion of the Work, except such rights as they may have to the proceeds of such insurance. This waiver applies to any deductible or self insured retention amounts included in the insurance referenced in this paragraph. The Owner or Design-Builder, as appropriate, shall require of their tenants, consultants, Subcontractors, and agents and employees of each and all of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

8.10 Certificates of Insurance

Each party shall file with the other party certificates of insurance evidencing the coverage required under this Contract before an exposure to loss may occur. The certificates of insurance shall contain a provision requiring thirty (30) days written notice prior to cancellation of any insurance coverage.

8.11 Design-Builder's General Indemnification

To the fullest extent permitted by law, the Design-Builder shall defend, indemnify and hold harmless the Owner, its agents and employees from and against claims, damages, losses, and expenses including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself and other property required to be insured under Article 8) but only to the extent caused by negligent acts or omissions of the Design-Builder, a Subcontractor, a material supplier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

8.12 Owner's General Indemnification

To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Design-Builder, its Subcontractors, and the agents and

employees of all of them from and against claims, damages, losses, and expenses including but not limited to reasonable attorneys' fees, for bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself and other property required to be insured under Article 8), but only to the extent caused by negligent acts or omissions of the Owner, Others, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.

ARTICLE 9 - WARRANTIES

9.1 Design-Builder Warranty

The Design-Builder warrants to the Owner that all materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the construction work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the construction work will conform to the requirements of the Design-Build Documents. Construction work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

9.2 Correction of the Work

If within one year after Substantial Completion of the Work, or for Punch List items one year from the date of completion of each respective item, any of the construction work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the construction work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the right to require correction by the Design-Builder and to make a claim for breach of warranty. If Design-Builder fails to correct non-conforming construction work within a reasonable time during that period after receipt of notice from the Owner, the Owner may, after providing notice to Design-Builder in accordance with Article 13, correct it and submit an invoice to Design-Builder for the cost of such correction. The Design-Builder shall not be responsible for the costs of non-emergency warranty work done by others without specific approval of the Design-Builder, unless the Owner has given reasonable notice and the work has not been corrected.

9.3 Vendor & Supplier Warranties

The Design-Builder shall assign to the Owner all warranties and guarantees obtained from all vendors and suppliers and render reasonable assistance to the Owner when requested to enforce such warranties and guarantees.

ARTICLE 10 - OWNER RESPONSIBILITIES

- 10.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner by the date specified, or if no date is specified, then with reasonable promptness to permit the Design-Builder to proceed with the performance of the Work in a proper and orderly manner without rework or delay. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services. Any costs or delays arising from the late receipt of such information will be the responsibility of the Owner.

10.2 Project Site

The Owner represents that the Project Site is zoned for the Project described in the Preamble. The Owner further represents that it will hold fee simple title to the Project Site on or before May 1, 2009 and that the legal description for the same is as follows: **see Exhibit I**. Upon request by Design-Builder, the Owner agrees to furnish Design-Builder with evidence that the Owner has fee simple title to the Project Site or leasehold control of the Project Site. Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

10.3 Survey Information

This Contract is based on a certified topographical and utility survey of existing conditions prepared by Guest Consultants, entitled Topographic Survey and Mapping, dated September 24, 2008, and supplied by the Owner. The Contract Sum and Scheduled Substantial Completion Date are predicated upon the accuracy of this information. Additional cost or delays, if any, due to errors or omissions in the information will be the responsibility of the Owner.

- 10.3.1 The Owner shall retain the services of a registered land surveyor for the accurate placement and staking of all property corner posts and property lines of the real property on which the Project is to be constructed.

- 10.3.2 The Owner shall direct its surveyor to assist the Design-Builder in obtaining off-site grading and utility information required to perform the Work.

10.4 Soils & Sub Surface Information

This Contract is based on a geotechnical report prepared by Aquaterra Engineering, LLC, entitled Geotechnical Investigation Lakeland Plaza site last dated September 15, 2008, and supplied by the Owner. The Contract Sum and Scheduled Substantial Completion Date are predicated upon the accuracy of this information. Additional cost or delays, if any, due to errors and omissions in the information or significant variation in conditions such as seasonal bad soils, variable water tables, or rock between borings will be the responsibility of the Owner.

10.5 Owner Equipment Information

The Owner shall supply the Design-Builder with timely information required to coordinate the Work with any Owner supplied equipment and systems. The Design-Builder shall indicate in writing the need for equipment and/or systems information and a date when such information is required. **See Exhibit H**

10.6 Owner Provided Information

Design-Builder is not responsible for the accuracy or completeness of any information or services furnished by the Owner to the Design-Builder. Design-Builder shall be entitled to rely upon the accuracy and completeness of information provided by the Owner, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing. However, the Design-Builder is responsible to exercise reasonable professional judgment regarding the information or services furnished by the Owner to the Design-Builder. If additional costs are incurred by the Design-Builder due to the inaccuracy or incompleteness of information provided by the Owner, such additional costs shall be the responsibility of the Owner. The Design-Builder shall give the Owner reasonable notice of any material inaccuracy or inadequacy in the information provided by the Owner to the Design-Builder to the extent Design-Builder should reasonably be expected to identify the same so that additional costs may be minimized if possible.

10.7 Owner Approvals & Instructions

Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Design-Build Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. The Owner shall be responsible for any costs and/or delays resulting from inconsistent instructions or approvals given to the Design-Builder by the Owner.

10.8 Government Regulatory Approvals and Permits

The Owner shall be responsible for the cost of all approvals, permits, licenses, fees and/or variances from any and all federal, state, county municipality, utility companies and any other jurisdictional agencies required for the performance of the Work. The Design-Builder shall assist the Owner in making such requests and submitting applications and processing such approvals, permits, licenses and variances as set forth below in Section 11.4.3. All such fees, special assessments, area charges, impact fees, and any and all other municipal, agency, utility or regulatory charges are the responsibility and cost of the Owner. Additional costs associated with unusual, extraordinary or not reasonably foreseeable or anticipated sequence of securing approvals, permits, licenses, and/or variances and/or other issues related to soils, subsurface and environmental studies, reports and investigations required for submission to any governmental or quasi-governmental authorities or others having jurisdiction over the Project shall also be at the responsibility and cost of the Owner.

10.9 Owner's Work

Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Design-Build Documents.

10.10 Financing

The Owner will provide the Design-Builder with satisfactory written evidence that funds will be available for all of the Progress Payments and Final Payment required of Owner for this Work on or before March 15, 2009, and upon request thereafter by Design-Builder. Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Contract, Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources (including escrow and title companies) any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Design-Build Documents. If an escrow agent is to be used by any lending institution, the Owner must inform the Design-Builder of all such requirements at least thirty (30) days prior to the first progress payment request. Additional documentation or other requirements beyond that which Design-Builder would provide in its normal and customary course of business will be the responsibility of the Owner.

ARTICLE 11 - DESIGN-BUILDER'S RESPONSIBILITIES

11.1 Basic Design Services

The Design-Builder shall prepare construction documents consisting of drawings and specifications setting forth in detail the requirements for Design-Builder's construction of the Project based on the Contract Drawings and Specifications referenced in Exhibit "A" and any further adjustments in the scope of the Project, documented in a Change Order or written amendment and authorized by the Owner (hereinafter called "Design Services").

11.1.1 The Design-Builder shall meet with the Owner periodically to review progress of the construction documents. The construction documents shall be made a part of the Design-Build Documents by execution of a Change Order.

11.1.2 Design Services shall be provided through qualified, licensed design professionals employed by or selected and paid by Design-Builder. Persons, other than employees of Design-Builder, or entities providing Design-Services to the Project under a subcontract with Design-Builder are as follows:

Helin Professional Services, P.C. will provide architectural services for the Project.

- 11.1.3 Design Services shall be performed with the skill and care ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

11.2 Additional Design Services

Additional Design Services are the result of circumstances beyond the control of the Design-Builder; however, Design-Builder will not proceed with such services without Owner's written approval. The cost and time, if any, for these Additional Design Services shall be added to the Contract by Change Order. Additional Design Services may include, but are not limited to, the following:

- 11.2.1. Revisions to drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given to the Design-Builder by the Owner.
- 11.2.2 Design Services required to investigate, design, engineer and specify a change in the Work requested by the Owner.
- 11.2.3 Environmental engineering or remediation not explicitly included in the Work.

11.3 Optional Design Services

Optional Design Services require the written authorization of the Owner. The cost and time, if any, for these Optional Design Services shall be added by Change Order or written amendment. Optional Design Services may include the following:

- 11.3.1 Artistic renderings or models.
- 11.3.2 Services of consultants for other than normal architectural, civil, structural, landscape, mechanical and electrical services for the Project.
- 11.3.3 Any other services not otherwise included in this Contract or not customarily furnished in accordance with generally accepted architectural and engineering practice.

11.4 Construction Services

- 11.4.1 The Design-Builder shall, through itself or Subcontractors, provide and furnish all necessary management, labor, materials, supplies, tools and equipment for the construction of the Project. The Construction Services shall be performed in a workmanlike manner.

- 11.4.2 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Design-Build Documents. The Owner agrees that the direction and supervision of the working forces, including Subcontractors, rests exclusively with the Design-Builder, and the Owner agrees not to issue instructions to or

interfere with workers or Subcontractors of the Design-Builder. The Owner agrees not to negotiate directly with workers or Subcontractors of the Design-Builder for additional work or to engage other contractors within the Project without the consent of the Design-Builder.

- 11.4.3 The Design-Builder shall submit an application, after execution by the Owner, to all applicable federal, state, county, municipality, agencies, and utility companies for the purpose of obtaining all governmental approvals, hook-ups, permits, licenses and any variances required for the performance of the Work. The cost of such approvals, fees, permits, licenses and variances is not included in the Contract Sum and shall be the responsibility of the Owner in accordance with Section 10.8. Additional costs due to consultations and representations, including healthcare reimbursement or licensure issues other than normal assistance in securing any such approvals, permits, licenses and variances before governmental authorities or others having jurisdiction over the Project shall be the responsibility of the Owner.
- 11.4.4 The Design-Builder shall schedule and conduct regular meetings at mutually convenient times with the Owner during the course of the Work to keep the Owner informed of the progress and quality of the Work.
- 11.4.5 The Design-Builder will keep the Site sufficiently free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Final cleaning will be done in accordance with the Contract Specifications referenced in Exhibit A.
- 11.4.6 Design-Builder will coordinate its design and construction activities as required to incorporate Owner's material and equipment into the Project so long as such accommodation does not materially affect the cost and schedule of Design-Builder's Work.

11.4.7 Coordination

11.4.7.1 Owner Furnished Products:

The Design-Builder will cooperate with the Owner's suppliers and installers for products not included in the Design-Build Contract, but which the Owner desires to be delivered or installed at the Site prior to Final Completion. The Owner must receive approval from the Design-Builder for all such products, such approval not to be unreasonably withheld. The Design-Builder will authorize the schedule for product delivery or installation at the Site. The Design-Builder may assist the Owner's suppliers and installers at the Site, but bears no responsibility for the condition of the products or their installation. The Design-Builder will take reasonable precautions to protect Owner furnished products, but does not assume responsibility for any loss or damage to such projects.

11.4.7.2 Work by Others:

The Design-Builder will cooperate with other contractors selected by the Owner to perform work not included in the Design-Build Contract. The Owner must receive approval from the Design-Builder for all such Contracts. The Design-Builder will authorize the schedule for the work of such Contracts at the site. The Design-Builder may assist the Owner in letting other Contracts, but bears no responsibility for the performance of such contractors or their Work.

11.4.7.3 Cutting and Patching:

The Design-Builder will cut, patch or properly fit together as required to complete the Work. The Design-Builder will not cut, patch or otherwise alter the work of the Owner or its contractors without their consent, nor will the Owner or its contractors cut, patch or otherwise alter the work of the Design-Builder without consent. The Design-Builder and the Owner will not unreasonably withhold their consent for cutting, patching or alterations for the completion of their work.

11.4.8 Submittals

Shop drawings, product data and samples are not Design-Build Documents. The Design-Builder will coordinate the review and approval of subcontractor, manufacturer, and supplier submittals as required to perform the Work. The Design-Builder will provide typical samples of significant exterior and interior finish materials for review by the Owner. The Design-Builder will solicit the Owner's review of submittals prior to approval for items of interest expressed by the Owner. The Owner will provide written request for pre-approval submittal review within 30 days after Contract signing. Upon request, Owner may review approved submittals for the Project. Upon request, the Owner will provide for review by the Design-Builder, submittals of shop drawings, product data and samples from the Owner contractors, suppliers and installers for Work by Others on the Project.

11.4.9 Temporary Project Controls and Construction Facilities

11.4.9.1 Temporary Utilities:

For stand alone buildings, the Design-Builder will be responsible for, and pay for, all utilities, including electricity, water and heating energy, and will provide necessary temporary equipment until the Substantial Completion of the Work is achieved or the building is occupied by Owner. For addition and infill work, the Owner will provide utilities for construction until Final Completion.

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11.4.9.2 Safety:

The Design-Builder requires all their employees and subcontractors to abide by the rules and policies of its safety program. The Owner's representatives and subcontractors will also be required to abide by the Design-Builder's rules and policies of the safety program while on the Site.

11.4.9.3 Security:

The Design-Builder will be responsible for the security of the Site using methods as required by Project conditions.

11.4.9.4 Site Access:

Owner's representatives, subcontractors and visitors to the Site must be acknowledged by the Design-Builder's Site representatives prior to access to the Site for each occurrence. The Design-Builder will reasonably accommodate Site access to the Owner. Scheduled or prior notice of Site visits by the Owner is requested by the Design-Builder.

11.4.9.5 Project Identification Sign:

The Design-Builder will be allowed to provide its standard Project identification sign.

11.4.9.6 Temporary Facilities:

The Design-Builder may provide temporary field offices, sheds, parking areas or access roads on the Site in the course of the performance of the Work. Temporary facilities will not be placed or constructed on properties off the site, unless the owner of that off site property grants permission.

11.4.9.7 Traffic Regulation:

The Design-Builder will cooperate with the Owner, adjacent landowners and the local authorities to control the construction related traffic and parking. Reasonable access and parking are anticipated by the Design-Builder to be available for the performance of the Work.

11.5 The Design-Builder shall compile the following for the Owner's future use:

- a) Record Drawings in hard copy format and one portable document format (pdf) file of the architectural and engineering plan sheets.
- b) Change Order documentation.
- c) Warranties.
- d) Operation and maintenance manuals.
- e) Construction specifications

- 11.6 The Design-Builder shall perform the Work in accordance with all applicable Legal Requirements. If the Legal Requirements change after the date the parties enter into this Contract and such changes affect the performance of the Work, then the Contract Sum, Scheduled Substantial Completion Date, or both shall be equitably adjusted by Change Order.

ARTICLE 12 – DISPUTE RESOLUTION

12.1 Initial Dispute Resolution

If a dispute arises out of or relates to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation following the Construction Industry Mediation Rules of the American Arbitration Association before recourse to arbitration. Issues to be mediated are subject to the exceptions in Paragraph 12.2 for arbitration. The location of the mediation, and subsequent arbitration, if any, shall be the capital of the state in which the Project is located. Once one party files a request for mediation with the other party, the parties agree to conclude such mediation within a reasonable period of filing of the request.

12.2 Agreement to Arbitrate

Any controversy or claim arising out of or relating to this Contract or its breach not resolved by mediation, except for claims relating to Design-Builder's lien rights or which have been waived by the making or acceptance of Final Payment, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect except as otherwise provided herein. The arbitrator shall apply the law applicable to the county and state in which the Project is located. The parties shall be entitled to present dispositive motions to the arbitrator in advance of the hearing, and any dispositive motions shall be submitted in accordance with the procedural rules applicable to civil actions in the county and state in which the Project is located. To the fullest extent possible, the arbitrator in conducting any hearings hereunder shall follow the rules of evidence applicable to civil actions in the county and state in which the Project is located. Either party may arrange for a transcript of the arbitration hearing to be prepared at the party's own expense.

12.3 Notice of Demand

A written demand for arbitration shall be filed with the other party to this Contract within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run its course.

12.4 Award

The arbitrator is permitted to award any remedy that would be available in a civil action under applicable statutory or common law of the jurisdiction in which the Project is located. The arbitration decision or award shall be final and binding on both parties in the absence of fraud, bias, corruption or any other basis recognized under the Federal Arbitration Act or the arbitration act for the jurisdiction in which the Project is located. Judgment upon the award may be confirmed in any court having jurisdiction.

12.5 Work Continuance and Payment

Unless otherwise agreed in writing or provided for in the Design-Build Documents, the Design-Builder shall continue the Work and maintain the approved schedules during any arbitration proceedings. If the Design-Builder continues to perform, the Owner shall continue to make payments in accordance with this Contract.

12.6 Cost of Dispute Resolution

The prevailing party in any dispute arising out of or relating to this Contract or its breach that is resolved by arbitration or litigation shall be entitled to recover from the other party reasonable attorney's fees, expert witness fees, costs and expenses incurred by the prevailing party in connection with such arbitration or litigation. For the purpose of the application of this provision, the prevailing party shall be determined as follows: the prevailing party shall be that party whose last written settlement position (demand/offer) is closest to the final binding decision. In order to be considered for the purpose of this provision, any settlement position (demand/offer) must be in writing and must have been delivered by certified mail to the other party. It is the intent of this provision for the arbitrator or court to identify the true party prevailing in any proceeding. To that end, in the event that a settlement position has not been taken by a party seeking relief (i.e. the claimant) the arbitrator or court shall consider the settlement demand to be the full relief requested by such party. In the event that a settlement position has not been taken by the respondent, the arbitrator or court shall consider the offer to be a complete rejection of the relief requested by the claimant. Where there are mixed claims and counterclaims, the determination of the prevailing party shall be within the discretion of the arbitrator or court consistent with the intent of this provision.

12.7 Commencement of Statutory Limitation Period

12.7.1 As between the Owner and Design-Builder:

.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 Between Substantial Completion and final Application for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and

.3 After Final Application for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section 9, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section 9, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

12.8 Mutual Waiver of Consequential Damages

12.8.1 The Design-Builder and Owner agree to waive claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

12.8.2 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this section 12.8.2 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

ARTICLE 13 - TERMINATION

13.1 The Owner shall have the right at any time to terminate this Design-Build Agreement for convenience and without cause upon written notice to the Design-Builder. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

13.2 In the event Owner terminates this Design-Build Agreement for convenience, Design-Build shall receive and accept, as full payment for work performed prior to such termination, payment for all Design and Construction Services rendered, including any retainage, all costs of labor, subcontractors and materials, including taxes and insurance, materials ordered, cancellation charges, indirect expenses, profit prorated to the date of termination, along with reasonable overhead and profit on Work not executed.

13.3 The following items shall be considered a breach of the Design-Build Agreement by Design-Build:

- .1 Design-Build persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 Design-Build fails to make payment to Subcontractors for services, materials or labor in accordance with the respective agreements between the Design-Build and the Subcontractors;
- .3 Design-Build persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- .4 Design-Build otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

In the event Design-Build is in breach of Design-Build Agreement, then Owner shall give Design-Build written notice of the breach and Design-Build shall have fifteen (15) days to respond, and fifteen (15) additional days within which to either correct or commence to correct the breach with reasonable diligence. If Design-Build fails to correct or commence to correct the breach in accordance with this section, then Owner may terminate the Design-Build Agreement. When the Owner terminates the Design-Build Agreement for one of the reasons stated in this Section, the Design-Build shall not be entitled to receive further payment until the Work is finished. Any billed but unpaid amounts requested plus any retainage for the Work performed prior to termination will be offset against any damages incurred by Owner as a result of such breach. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Build. If such costs and damages exceed the unpaid balance, the Design-Build shall pay the difference to the Owner.

13.4 The following items shall be considered a breach of the Design-Build Agreement by Owner:

- .1 Owner fails to make payment to the Design-Build in accordance with the Design-Build Documents; or

- .2 Owner fails to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence of financing as required by the Contract;
- .3 Owner persistently fails to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work
- .4 Owner, or those directly or indirectly controlled by Owner, cause suspensions, delays or interruptions of the Work which constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 60 days in any 365-day period, whichever is less.
- .5 Owner otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

In the event Owner is in breach of the Design-Build Agreement, then Design-Builder shall give Owner written notice of the breach and Owner shall have fifteen (15) days to respond, and fifteen (15) additional days within which to either correct or commence to correct the breach with reasonable diligence. If Owner fails to correct or commence to correct the breach in accordance with this section, then Design-Builder may terminate the Design-Build Agreement and Owner shall make payment to Design-Builder in accordance with Section 13.2.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

- 14.1.1 **Ownership of Documents and Electronic Data.** Drawings, specifications, and other documents, including those in electronic form, furnished by the Design-Builder are Instruments of Service. The Design-Builder and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.
- 14.1.2 **Owner's Limited License Upon Payment in Full.** Upon completion of the construction portion of the Work and Owner's payment in full for all Work performed under the Design-Build Documents, Design-Builder shall grant Owner a limited non-exclusive license to use the Instruments of Service in connection with its occupancy of the Project (including maintenance thereof) and for reference purposes on additions or modifications to this Project, conditioned on Owner's express understanding that its use of the Instruments of Service is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder (collectively the "Indemnified Parties"). For purposes of clarity, this Section 14.1.2 shall only apply if Design-Builder has performed and

completed construction of the portion of the Project indicated in the Design-Build Documents to be completed by Design-Builder.

14.1.3 Owner's Limited License Upon Design-Builder's Default. If this Contract is terminated due to Design-Builder's default pursuant to Section 13.3 hereof and (i) it is determined that Design-Builder was in default and (ii) Owner has fully satisfied all of its obligations under the Design-Build Documents, Design-Builder shall grant Owner a limited non-exclusive license to use the Instruments of Service in connection with Owner's completion and occupancy of the Project (including maintenance thereof) and for reference purposes on additions or modifications to the Project. This limited license is conditioned on Owner's express understanding that its use of the Instruments of Service is at Owner's sole risk and without liability or legal exposure to any Indemnified Party.

14.1.4 Assignment. The assignment or transfer of any licenses granted by Design-Builder is not permitted without prior written consent of Design-Builder. Such consent shall not be unreasonably withheld.

14.1.5 Owner's Limited License Upon Termination for Convenience. If this Contract is terminated for any reason other than the default of Owner or Design-Builder, then Owner and Design-Builder shall negotiate in good faith a written agreement specifying the conditions governing the use of the Instruments of Service in connection with the Owner's completion and occupancy of the Project (including maintenance thereof).

14.1.6 Owner's Indemnification for Use of Instruments of Service. If Owner uses the Instruments of Service under any circumstances, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorney's fees, arising out of or resulting from the use of the Instruments of Service.

14.1.7 Electronic Exchange of Documents. Except as otherwise provided in this Contract, prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

14.2 Applicable Law

This Contract will be governed by the laws in effect at the location of the Project.

14.3 Assignment of Contract

The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in

respect to covenants, agreements and obligations contained in the Design-Build Documents. Neither party to the Design-Build Agreement shall assign the Design-Build Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Agreement. Notwithstanding the foregoing, the Owner may assign this Contract to reasonably accommodate its construction lender (provided the lender shall assume the Owner's rights and obligations under the Design-Build Documents) and the Design-Builder may assign a portion of this Design-Build Agreement to a Subcontractor.

14.4 Subcontractor Selection

If requested, the Design-Builder shall furnish the Owner the names of qualified Subcontractors proposed for each principal portion of the Work. If the Owner has reasonable and timely objections to a proposed Subcontractor, the Design-Builder shall submit an alternate, qualified Subcontractor mutually agreeable to Design-Builder and Owner. The Contract Sum, Scheduled Substantial Completion Date, or both shall be equitably adjusted by Change Order for any increase in cost or delay occasioned by such substitution.

14.5 Substantial Completion Date/Permits and Approvals

The Scheduled Substantial Completion Date, as shown in Article 3 above, is predicated upon obtaining a site permit for the Project from the City of Flowood by May 11, 2009 and a full building permit for the Project from the City of Flowood prior to June 29, 2009. If any of these approvals or permits are not obtained by their respective dates, the Scheduled Substantial Completion Date, Contract Sum, or both will be reviewed and equitably adjusted.

14.6 Substantial Completion Date/Owner's Equipment

This Contract has been prepared prior to receipt of equipment information: PET/CT SCAN, X-ray, MRI, CAT SCAN, Ultra Sound, Mammography optical and audio equipment, which is to be supplied by the Owner. The Scheduled Substantial Completion Date, as shown in Article 3 above, is based upon receipt of such information by the Design-Builder on or before March 31, 2009. If such information is not so received, the Project schedule will be reviewed with the Owner and the Scheduled Substantial Completion Date, Contract Sum, or both will be reviewed and equitably adjusted.

14.7 Severability

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.8 Titles

The title given to the Articles and Sections of this Contract are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.9 Modification of Contract

The Design-Build Agreement may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Agreement signed by both parties or (2) a Change Order.

14.10 No Waiver

The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Design-Build Documents shall not be construed as a waiver of relinquishment of such obligation or right with respect to future performance.

14.11 Notice

Whenever the Design-Build Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

14.12 Extent of Contract

This Contract is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supercedes all prior negotiations, representations or agreements, either written or oral, between the parties.

14.13 Wiring and Conduit

The Contract Sum does not include any provisions for wiring, conduit or special equipment for computers, word processors, data processing, CRT terminals, dictation systems, music systems, or signal light systems

14.14 Power Conditioning

The Contract Sum does not include any provision to furnish and install a power conditioner UPS. If the Owner's equipment should require an uninterruptable power supply or clean power beyond the normal power fluctuation provided by the electric utility company, the appropriate UPS power line conditioner shall be specified, furnished, and installed by Others and any added cost or delay to the Work shall be the responsibility of the Owner and the Scheduled Substantial Completion Date, Contract Sum, or both shall be equitably adjusted to reflect the impact of the same on Design-Builder's Work.

14.15 Water Treatment/Chiller

The Contract Sum does not include any provision to furnish and install water softening or chiller equipment which may be provided by the Owner. The Design-Builder will furnish rough-ins for such equipment as further described in the contract specification as further described in the Contract Specifications referenced in Exhibit A.

14.16 Licensing

All state and/or federal licensing requirements for this facility are the sole responsibility of the Owner.

14.17 Equipment Drawings

The Owner has supplied Design-Builder with the general arrangement data regarding the MRI (and/or CT) equipment **See Exhibit H.** The Design-Build Documents, including the Contract Sum, have been prepared based on this information. It is understood that additional drawings and details will be prepared by the Manufacturer to indicate the technical requirements for the specific installations. If changes are required by subsequent information furnished by the Manufacturer which results in additional cost or delay, such cost or delay will be the responsibility of the Owner and the Scheduled Substantial Completion Date and/or Contract Sum shall be equitably adjusted by Change Order to reflect the impact of the same on Design-Builder's Work.

14.18 Ready for MRI (and/or CT)

The Work will be sufficiently complete for the Owner to take delivery and installation of the MRI (and/or CT) system after April 16, 2010.

14.19 The Owner will cause the MRI (and/or CT) equipment installation to be sufficiently complete after May 10, 2010 so that the Design-Builder can finish its Work in these areas. Should there be any delay in delivery and installation of MRI (and/or CT) equipment beyond such date, any delay and all additional cost such as temporary power, heat, insurance, building security, and remobilization costs of the Design-Builder shall be the responsibility of the Owner. The Scheduled Substantial Completion Date, Contract Sum, or both shall be equitably adjusted to reflect the impact of the same on Design-Builder's Work.

14.20 Substantial Completion

Substantial Completion of the Project is not predicated on final installation and acceptance of the MRI (and/or CT) system by the Owner.

14.21 MRI (and/or CT) Equipment Installation

The cost of MRI (and/or CT) equipment purchase, shipping, rigging and installation are not included in the Contract Sum. This Contract does include miscellaneous mechanical and electrical rough-ins per manufacturers typical shop drawings on file with Design-Builder. Final equipment connections are not included in the Contract Sum.

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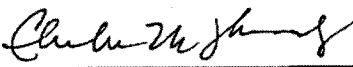
Design-Build Contract

EXECUTION DATE

This Contract is entered into as of the day and year first written above.

BRANDON MOB INVESTORS, LLC

By: Cogdell Spencer Advisors Management, LLC, a Delaware limited liability company, its Manager

By: 
Frank Spencer Charles M. Handy

Its: President CFO

Date: 2/9/09

ERDMAN COMPANY
(f/k/a) **MARSHALL ERDMAN & ASSOCIATES, INC.**
Engineering COA# E-00001152
Contractor License # 3719

By: 
Brian Happ

Its: Executive Vice President and Chief Operating Officer

Date: 3/2/09